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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	Docket No. V-W- '03-C-722
)	
R. Lavin & Sons, Inc. Site)	ADMINISTRATIVE ORDER BY
North Chicago, Illinois)	CONSENT PURSUANT TO
)	SECTION 106 OF THE
)	COMPREHENSIVE
)	ENVIRONMENTAL RESPONSE,
Respondent,)	COMPENSATION, AND
R. Lavin & Sons, Inc.)	LIABILITY ACT OF 1980,
)	as amended, 42 U.S.C. § 9606(a)
)	

I. JURISDICTION AND GENERAL PROVISIONS

This Order is entered voluntarily by the United States Environmental Protection Agency ("U.S. EPA") and the Respondent, R. Lavin & Sons, Inc. ("Respondent" or "R. Lavin"), as represented in this matter by the R. Lavin & Sons, Inc. Post-Confirmation Creditors' Committee ("Creditors' Committee"). The Order is issued pursuant to the authority vested in the President of the United States by Sections 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§9606(a), 9607 and 9622. This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C, and 14-14-D.

This Order provides for performance of removal actions, as directed by U.S. EPA, in connection with the R. Lavin property located at 2028 South Sheridan Road, North Chicago, Illinois 60064 (the "R. Lavin Site" or the "Site"). This Order requires the Respondent to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

A copy of this Order will also be provided to the State of Illinois, which has been notified of the issuance of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

The Respondent's participation in this Order shall not constitute an admission of liability or an admission of U.S. EPA's Findings of Fact, Conclusions of Law or Determinations contained in this Order except in a proceeding to enforce the terms of this Order. The Respondent agrees to

comply with and be bound by the terms of this Order. The Respondent further agrees that it will not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

This Order applies to and is binding upon U.S. EPA, and upon the Respondent's heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of the Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Order.

The Respondent shall ensure that its contractors, subcontractors, and representatives comply with this Order. The Respondent shall be responsible for any noncompliance with this Order.

III. FINDINGS OF FACT

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

1. The R. Lavin Site is located at 2028 South Sheridan Road in North Chicago, Lake County, Illinois. It is located in an industrial neighborhood with surrounding residential and commercial areas. The Site is approximately 17.5 acres and is located adjacent to Pettibone Creek which discharges to Lake Michigan.
2. R. Lavin began operating a secondary copper and brass recovery facility at the Site in 1941. Scrap copper and brass in many forms were imported from off-site sources, melted and refined in furnaces, and then poured into ingots that were shipped to customers. R. Lavin was classified under SIC Code 3341 and had at various times up to approximately 200 employees. R. Lavin upgraded its facility several times in advance of and in response to environmental regulations; it installed several baghouse dust collection systems, improved its closed-loop cooling water recirculating system, and implemented a surface run-off containment system and other control measures.
3. On February 26, 2001, an involuntary petition was filed against the Respondent under Section 303(b) of the Bankruptcy Code in the U.S. Bankruptcy Court for the Northern District of Illinois, Eastern Division, Case No. 01 B 06301 (the "Bankruptcy Court" or "Bankruptcy Case"). Subsequently, on March 20, 2001, the Respondent consented to the entry of an order for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy case. On September 13, 2001, the Bankruptcy Court entered an Order which confirmed the Creditors' Committee's Amended Liquidating Plan of Reorganization dated August 9, 2001 ("Liquidation Plan"). Pursuant to the terms of the Liquidation Plan, the Creditors' Committee is authorized and directed to liquidate the Respondent's assets and properties

on behalf of the Respondent for the benefit of the Respondent's creditors. As such, the Creditors' Committee is authorized by the Bankruptcy Court to represent Respondent in this settlement that involves some of Respondent's assets that are a part of the bankruptcy estate.

4. R. Lavin is currently non-operational. Areas of concern on-Site include three open-top storage tanks with approximately 2.6 million gallons of capacity, two retention ponds that directly or indirectly discharge to the storm sewer, the process pit, the slag piles (several of which are outside and uncovered), and the numerous baghouses throughout the facility.
5. Releases of contaminated effluent to the storm sewer have been and may continue to be an ongoing problem at this Site. Wastes from the Respondent's furnace clean-outs, flue dust collection, and contact cooling water treatment systems have entered the storm sewer, and, consequently, may have been discharged on and off-Site. In addition, large volumes of contaminated slag were stored outside and exposed to rainfall.
6. On November 9, 2001, based on information provided by the State of Illinois, U.S. EPA conducted a preliminary site visit to observe conditions at the Site. U.S. EPA subsequently formulated cost estimates for potential response actions at the Site that were a part of the United States' proofs of claim in the Bankruptcy case (collectively, the "U.S. Proof of Claim"). Under the terms of the Liquidation Plan, the Creditor's Committee has the right to object to, and seek Bankruptcy Court adjudication of, any and all claims filed in the Bankruptcy Case, including the U.S. Proof of Claim. The Creditor's Committee has not waived any of its rights and remedies to object to, and seek the disallowance of, all or any portion of the U.S. Proof of Claim as filed and/or hereafter amended in the Bankruptcy Case, except with respect to the performance of the work required herein, and all of the Creditors' Committee's rights and remedies in such regard are hereby expressly reserved. The United States expressly reserves all of its rights and remedies under the Liquidation Plan and applicable law.
7. U.S. EPA conducted a removal assessment at the Site on May 15, 2002, and confirmed that the Site contains various sources of hazardous substances that pose a threat of release to the environment. The Respondent, through the Creditors' Committee, is willing to enter into this Administrative Order by Consent with U.S. EPA to address contamination in the three storage tanks on-site, and if funds are still available, to continue with the additional work as described in Section V, Paragraph 2 of this Order, as directed by U.S. EPA.
8. U.S. EPA acknowledges that this Order is for the removal action at the R. Lavin & Sons, Inc. Site, as described herein, but that, in the future, additional response actions may be required for the R. Lavin & Sons, Inc. Site, and any related areas which may have been affected by contamination stemming from the Site.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, U.S. EPA has determined that:

1. The R. Lavin Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. Lead and cadmium are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
3. The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
4. Any Respondent that is a present "owner" and/or "operator" of a Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20) may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).
6. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 CFR § 300.415(b)(2). These factors include, but are not limited to, the following:

- a. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants.

This factor is present at the Site due to the existence of a large volume of material on-site which is contaminated with elevated levels of lead and cadmium. Lead and cadmium were detected in the majority of the samples taken from the tank and pond sediments, slag piles, and baghouses, at concentrations much higher than the regulatory limit. Lead is considered a cumulative poison and poses an inhalation and ingestion hazard. Long-term exposure to lead can result in build-up in the body, an effect known as bioaccumulation. Prolonged exposure to lead could result in kidney damage, anemia, and decreased fertility. Elevated lead exposure before or during pregnancy may cause birth defects. Cadmium is a naturally occurring element that can be toxic. Long term exposure can result in kidney disease, lung damage, and fragile bones.

- b. Actual or potential contamination of drinking water supplies or sensitive ecosystems.

This factor is present at the Site due to the potential for continued releases of contaminants to the storm sewer which discharges to Pettibone Creek that is a tributary of Lake Michigan. An Illinois EPA 2000 Water Quality Report listed Pettibone Creek as being "impaired," and the Great Lakes Naval Training Center Harbor (that is at the end of Pettibone Creek) as "fully non-supportive," as a result of contamination.

- c. Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release.

This factor is present at the Site due to the existence of three open-top storage tanks, and two retention ponds which contain sediments that are hazardous for lead and cadmium. Failure to address these storage units may result in future releases of hazardous substances to the environment.

- d. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released.

This factor is present at the Site due to heavy precipitation that could affect contaminated contents of the slag piles, tanks, and retention ponds. Uncovered slag piles that are located outside are subject to rain and snow events that could result in contaminated run-off being released to the ground and then to the groundwater and/or the storm sewer (that eventually runs to Pettibone Creek). The open-top tanks are subject to heavy precipitation that could cause an overflow of the contents of the tanks and, thus, an eventual release of contamination onto the ground and then into the groundwater and/or the storm sewer (that eventually runs to Pettibone Creek). These uncovered tanks are also susceptible to freezing, thawing and more rapid deterioration that could cause structural damage that could result in release of hazardous contaminants. The retention ponds have minimal freeboard and any significant precipitation would pose a threat of release to the storm sewer.

7. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

8. The removal actions required by this Order, when properly performed under the terms of this Order, are consistent with the NCP. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment.

V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, it is hereby ordered and agreed that the Respondent shall comply with the following provisions, including but not limited to all documents attached to or incorporated into this Order, and perform the following actions:

1. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

The Respondent shall perform the removal actions required by this Order itself or retain a contractor to implement the removal actions. The Respondent shall notify U.S. EPA of the Respondent's qualifications or the name and qualifications of such contractor, whichever is applicable, within 5 business days of the effective date of this Order. The Respondent shall also notify U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 5 business days prior to commencement of such work. U.S. EPA retains the right to disapprove of the Respondent or any of the contractors and/or subcontractors retained by the Respondent. If U.S. EPA disapproves a selected contractor, the Respondent shall retain a different contractor within 2 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that contractor's name and qualifications within 3 business days of U.S. EPA's disapproval.

The Respondent has designated Dan Caplice of K Plaus Environmental, Inc. as its Project Coordinator (600 West Van Buren Street, Chicago, IL 60607. Tel No. 312-343-0388) who shall be responsible for administration of all the Respondent's actions required by the Order. The Respondent shall submit Mr. Caplice's qualifications to U.S. EPA within 5 days from the effective date of this Order. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. In the event that Mr. Caplice is unable or unwilling to remain the Respondent's Project Coordinator, the Respondent shall name a successor project coordinator within 10 days of Mr. Caplice's withdrawal and notify the U.S. EPA of the identity of the new project coordinator, including, such designated coordinator's name, address, telephone number and qualifications. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If U.S. EPA disapproves a selected Project Coordinator, the Respondent shall retain a different Project Coordinator within 3 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that person's name and qualifications within 4 business days of U.S. EPA's disapproval. Receipt by the Respondent's Project Coordinator of any notice or communication from U.S. EPA relating to this Order shall constitute receipt by the Respondent.

The U.S. EPA has designated Bradley Benning of the Emergency Response Branch, Region 5, as its On-Scene Coordinator ("OSC"). The Respondent shall direct all submissions required by this Order to the OSC at 77 West Jackson Boulevard, Mail Code: SE-5J, Chicago, Illinois 60604-3590, by certified or express mail. The Respondent shall also send a copy of all submissions to Cynthia Kawakami, Associate Regional Counsel, at 77 West Jackson Boulevard, Mail Code: C-14J, Chicago, Illinois, 60604-3590. The Respondent is encouraged to make its submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content

where possible) and using two-sided copies.

U.S. EPA and the Respondent shall have the right, subject to the immediately preceding paragraph, to change their designated OSC or Project Coordinator. U.S. EPA shall notify the Respondent, and the Respondent shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice.

2. Work to Be Performed

- a. Subject to the provisions of subparagraph b below, the Respondent shall perform the following removal action in the order set forth (collectively, the "Work").
 - (i) Develop and implement a site-specific Work Plan for the Work, including a proposed time line.
 - (ii) Develop and implement a site-specific Health and Safety Plan for the Work.
 - (iii) Establish and maintain site security measures during the Work actions, which may include security guard service.
 - (iv) Identify, sample, and characterize the hazardous substances located at the Site involved with the Work. The parties acknowledge that an initial removal assessment has been previously conducted by U.S. EPA and that the data from this assessment may be relied upon by Respondent for the performance of the Work.
 - (v) Remove all water from the above ground storage tank ("AST") located at the South end of the Site (the "South AST") and treat such water as necessary to reduce contaminant levels to allow for appropriate disposal.
 - (vi) Remove all sediment from the South AST and treat such sediment as necessary to reduce contaminant levels to allow for appropriate disposal.
 - (vii) Decontaminate the South AST prior to dismantling and/or demolition.
 - (viii) Remove all accumulated water from the two ASTs and concrete pit located at the north end of the Site (collectively, the "North AST") and treat such water as necessary to reduce contaminant levels to allow for appropriate disposal.
 - (ix) Remove all sediment from the North AST and treat such sediment as necessary to reduce contaminant levels to allow for appropriate disposal.

- (x) Decontaminate the North AST prior to dismantling and/or demolition.
 - (xi) Remove all slag from the Site and dispose of it appropriately at a licensed facility; provided, however, Respondent may sell and/or transfer said slag to Colonial Metals, a recycler, for recycling and/or reclamation.
- b. The parties acknowledge that the funds available to address the costs of the Work are being provided pursuant to the terms of that certain Letter Agreement dated September 26, 2002 between the Respondent and the United States (the "Letter Agreement"). The Respondent shall use Environmental Funds, as defined in the Letter Agreement, to perform the Work as described herein. The parties to this Order acknowledge that the Environmental Funds may not be sufficient to fully complete all of the Work, in which case, the Respondent shall use the Environmental Funds to accomplish as much of the Work as can be paid for with the Environmental Funds.

2.1 Work Plan and Implementation

Within 10 business days after the effective date of this Order, the Respondent shall submit to U.S. EPA for approval a draft Work Plan for performing the removal activities set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Order.

U.S. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If U.S. EPA requires revisions, the Respondent shall submit a revised draft Work Plan within 7 business days of receipt of U.S. EPA's notification of required revisions. The Respondent shall implement the Work Plan as finally approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. The Respondent shall notify U.S. EPA at least 48 hours prior to performing any on-site work pursuant to the U.S. EPA approved Work Plan. The Respondent shall not commence or undertake any removal actions at the Site without prior U.S. EPA approval.

2.2 Health and Safety Plan

Within 10 business days after the effective date of this Order, the Respondent shall submit for U.S. EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 CFR Part 1910. If U.S. EPA determines it is appropriate, the plan shall also include contingency planning. The Respondent shall incorporate all changes to the plan recommended by U.S. EPA, and implement the plan during the pendency of the removal action.

2.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. The Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with U.S. EPA guidance.

Upon request by U.S. EPA, the Respondent shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. The Respondent shall provide to U.S. EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. The Respondent shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by U.S. EPA, the Respondent shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by the Respondent or its contractors or agents while performing work under this Order. The Respondent shall notify U.S. EPA not less than 3 business days in advance of any sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary.

2.4 Post-Removal Site Control

In accordance with the Work Plan schedule, or as otherwise directed by the OSC, the Respondent shall submit a proposal for post-removal site control, consistent with Section 300.415(l) of the NCP, 40 CFR §300.415(l), and OSWER Directive 9360.2-02. Upon U.S. EPA approval, the Respondent shall implement such controls and shall provide U.S. EPA with documentation of all post-removal site control arrangements.

2.5 Reporting

The Respondent shall submit a monthly written progress report to U.S. EPA concerning actions undertaken pursuant to this Order, beginning 30 calendar days after the date of U.S. EPA's approval of the Work Plan, until termination of this Order, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

The Respondent shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee. The Respondent shall give written notice of any proposed conveyance to U.S. EPA and the State in accordance with Bankruptcy Rule 2002 and, in addition to the other parties to be notified under paragraph 7.04(a) of the

Liquidation Plan. The notice to U.S. EPA and the State shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.3 (Access to Property and Information).

2.6 Final Report

Within 60 calendar days after completion of the Work required under this Order, or the consumption of the Environmental Funds if the Work cannot be fully completed within the available funds, the Respondent shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP, 40 CFR § 300.165. The final report shall also include a good faith accounting of total costs incurred in complying with the Order, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

3. Access to Property and Information

The Respondent shall provide or obtain access to the Site and off-site areas to which access is necessary to implement this Order, and shall provide access to all records and documentation related to the conditions at the Site and the actions conducted pursuant to this Order. Such access shall be provided to U.S. EPA employees, contractors, agents, consultants, designees, representatives, and State of Illinois representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which U.S. EPA determines to be necessary. The Respondent shall submit to U.S. EPA the results of all sampling or tests and all other data generated by the Respondent or its contractors, or on the Respondent's behalf during implementation of this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than the Respondent, the Respondent shall use its best efforts to obtain all necessary access agreements within 14 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. The Respondent shall immediately notify U.S. EPA if, after using its efforts, it is unable to obtain such agreements. The Respondent shall describe in writing its efforts to obtain access. U.S. EPA may then assist the Respondent in gaining access, to the

extent necessary to effectuate the response actions described herein, using such means as U.S. EPA deems appropriate. The Respondent shall reimburse U.S. EPA for all costs and attorneys fees incurred by the United States in obtaining such access.

4. Record Retention, Documentation, Availability of Information

The Respondent shall preserve all documents and information, in its possession or the possession of its contractors, subcontractors or representatives, relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the removal actions required by this Order. At the end of this six year period and at least 60 days before any document or information is destroyed, the Respondent shall notify U.S. EPA that such documents and information are available to U.S. EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to U.S. EPA. In addition, the Respondent shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of U.S. EPA. Any information that the Respondent is required to provide or maintain pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §3501 et seq.

5. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by U.S. EPA, with the U.S. EPA Off-Site Rule, 40 CFR §300.440, 58 Fed. Reg. 49215 (Sept. 22, 1993).

6. Compliance With Other Laws

The Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. §9621(e), and 40 CFR §300.415(j). In accordance with 40 CFR §300.415(j), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

7. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. The Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer,

Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions. If the Respondent fails to respond, U.S. EPA may respond to the release or endangerment and reserve the right to recover costs associated with that response.

The Respondent shall submit a written report to U.S. EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. The Respondent shall also comply with any other notification requirements, including those in Section 103 of CERCLA, 42 U.S.C. §9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §11004.

VI. AUTHORITY OF THE U.S. EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by U.S. EPA or the Respondent at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

VII. REIMBURSEMENT OF COSTS

"Past response costs" are all costs, including, but not limited to, direct and indirect costs and interest, that the U.S. EPA and/or U.S. DOJ, their employees, agents, contractors, consultants, and other authorized representatives incurred and paid with regard to the Site prior to the effective date of this Order. "Oversight costs" are all costs, including, but not limited to, direct and indirect costs, that U.S. EPA incurs in reviewing or developing plans, reports and other items pursuant to this AOC, on and after the effective date of this AOC.

The Respondent acknowledges that, in the future, there may be additional proceeds from bankruptcy and/or insurance settlements¹ regarding the U.S. Proof of Claim or the U.S. EPA's environmental claims at this Site that may be paid by the Respondent to the United States. Subject to the parties' further agreements or order of the Bankruptcy Court, any such payments in the future may be used for funding any necessary additional environmental cleanup of the Site, and/or areas related to contamination stemming from the Site, addressing natural resource damages, and/or reimbursing the U.S. EPA and the U.S. Department of Justice for any unpaid past response and/or oversight costs incurred in connection with the R. Lavin & Sons Site that

¹Any settlement(s) between the United States and the Creditors' Committee regarding the distribution of bankruptcy and/or insurance proceeds regarding the R. Lavin & Sons Site shall be documented in separate agreements, apart from this AOC.

are not inconsistent with the NCP.

To the extent that there remain any of the Environmental Funds after the completion of the Work, the Respondent shall cause such excess funds to be remitted to the U.S. EPA and the U.S. Department of Justice for reimbursement of any unpaid past response and/or oversight costs incurred in connection with the R. Lavin & Sons Site that are not inconsistent with the NCP.

VIII. DISPUTE RESOLUTION

The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order. The Respondent's obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section.

IX. FORCE MAJEURE

The Respondent agrees to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of the Respondent or of any entity controlled by the Respondent, including but not limited to its contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite the Respondent's best efforts to fulfill the obligation.

The Respondent shall notify U.S. EPA orally within 24 hours after the Respondent becomes aware of any event that the Respondent contends constitutes a force majeure, and in writing within 7 calendar days after the event. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. The Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall be grounds for U.S. EPA to deny the Respondent an extension of time for performance. The Respondent shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

If U.S. EPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by U.S. EPA. Such an extension shall not alter the Respondent's

obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

X. STATUTORY PENALTIES

Violation of any provision of this Order may subject the Respondent to civil penalties of up to twenty-seven thousand five hundred dollars (\$27,500) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. §9606(b)(1). The Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3). Should the Respondent violate this Order or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. §9606.

XI. RESERVATION OF RIGHTS

Except as specifically provided in this Order, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site.² Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

The Creditors' Committee hereby expressly reserves any and all of its rights and remedies under the Liquidation Plan or otherwise, including, without limitation, the right to object to and seek the disallowance of, all or any portion of the U.S. Proof of Claim as filed and/or hereafter amended in the Bankruptcy Case, except with respect to the performance of the work required herein. The United States expressly reserves all of its rights and remedies under the Liquidation Plan and applicable law. Nothing contained herein shall affect, modify, limit or impair the terms and conditions of the Liquidation Plan, all of which shall remain in full force and effect, and be fully binding upon all parties in interest in the Bankruptcy Case, including, with limitation, the United States.

²This AOC is not intended to bind and does not bind any federal agency that is not a signatory to this AOC.

XII. OTHER CLAIMS

By issuance of this Order, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of the Respondent. The United States or U.S. EPA shall not be a party or be held out as a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Order.

Except as expressly provided in Section XIII (Covenant Not To Sue), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§9606(a), 9607(a).

This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondent waives any claim to payment or reimbursement under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612 or any other provision of law, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order. No action or decision by U.S. EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. §9613(h).

XIII. COVENANT NOT TO SUE

Except as otherwise specifically provided in this Order, upon issuance of the U.S. EPA notice referred to in Section XVII (Notice of Completion), U.S. EPA covenants not to sue the Respondent for judicial imposition of damages or civil penalties or to take administrative action against the Respondent for the removal actions agreed to in this Order and actually performed by Respondent in accordance with this Order, except as otherwise reserved herein.

These covenants not to sue are conditioned upon the complete and satisfactory performance by the Respondent of its obligations under this Order. These covenants not to sue extend only to the Respondent and do not extend to any other person.

XIV. CONTRIBUTION PROTECTION

With regard to claims for contribution against the Respondent for work actually performed by Respondent under this Order, the Parties hereto agree that the Respondent is entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) and

122(h)(4) of CERCLA, 42 U.S.C. §§9613(f)(2) and 9622(h)(4).

Nothing in this Order precludes Parties from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

XV. INDEMNIFICATION

The Respondent agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of the Respondent and the Respondent's officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any Respondent, and any persons for performance of work on or relating to the Site, including claims on account of construction delays. Nothing in this Order, however, requires indemnification by the Respondent for any claim or cause of action against the United States based on negligent action taken solely and directly by U.S. EPA, its officials, agents, employees, representatives, successors, and assigns, (not including oversight or approval of plans or activities of the Respondent).

XVI. MODIFICATIONS

Except as provided in Section V, paragraph 2.b, modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction with prior notice to the Creditors' Committee. If the OSC makes an oral modification with prior notice to the Creditors' Committee, it will be memorialized in writing within 7 business days after such notice; however, the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

If the Respondent seeks permission to deviate from any approved plan or schedule, the Respondent's Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve the Respondent of its obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XVII. NOTICE OF COMPLETION

When U.S. EPA determines, after U.S. EPA's review of the Final Report, that all work has been fully performed, or performed to the extent permitted by the amount of the Environmental Funds, in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention), U.S. EPA will provide written notice to the Respondent. If U.S. EPA determines that any removal activities have not been completed in accordance with this Order, then: (a) the U.S. EPA will notify the Respondent, provide a list of the deficiencies, and require that the Respondent modify the Work Plan if appropriate to correct such deficiencies and (b) the Respondent, to the extent that there remain Environmental Funds, shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice, in which case, failure to implement the approved modified Work Plan shall be a violation of this Order.

XVIII. SEVERABILITY

If a court issues an order that invalidates any provision of this Order or finds that the Respondent has sufficient cause not to comply with one or more provisions of this Order, the Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XIX. EFFECTIVE DATE

This Order shall be effective upon receipt by the Respondent of a copy of this Order signed by the Director, Superfund Division, U.S. EPA Region 5.

IN THE MATTER OF:

R. LAVIN & SONS, INC. SITE
North Chicago, IL 60064

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 2nd day of October, 2002.

By: D. Abrams
David Abrams, not individually, but solely as Chairman
of the R. Lavin & Sons, Inc. post-Confirmation Creditors' Committee.

IT IS SO ORDERED AND AGREED

By: William E. Muno
for William E. Muno, Director
Superfund Division

Date: 24 Oct 02